

(ii) the character of a network shall be determined by reference to the nature, mix and quantity of programming provided on the network and whether such programming is supported by commercial sponsorship or other means. (The character of a network which contains a uniform programming format, *e.g.*, an all-shopping channel, an all-weather channel, an all-sports channel, etc., shall be considered distinct from the character of a network which includes various categories of programming. The character of a network shall also include consideration of whether a network provides programming 24 hours per day or some lesser period of time; and

(iii) *promotes repeatedly and in a significant manner* shall mean a promotion of the availability of a particular network on basic cable service which is designed to encourage the public to subscribe to basic cable service to receive such network and which is conducted by use of multiple media or by the multiple use of a single medium.

(2) Notice required. Every cable television company shall provide notice of a network change to the commission and to the subscribers affected thereby.

(3) Notice to commission. Notice shall be provided to the commission no later than the later occurring 45 days prior to the effective date of the change or within five business days of the date upon which the cable television company first knows of such change. Notice shall specify the network affected by the change, whether such network was, or will be, distributed as part of the basic cable service or some other service tier immediately prior to the change and the effective date of the change. If the network change relates to the basic service tier, the notice to the commission shall also state whether said network has been repeatedly promoted by the cable television company as available on its basic cable service during the six months immediately preceding the date of the change and, if the network has been so promoted during such period of time, the notice shall also include the specific date upon which such promotion was concluded and the number of subscribers who commenced their subscription to basic cable service during the 90 days immediately before and after the last day of promotion. If the network change relates to a network that is being deleted from basic cable service and will not be available on any other service tier, the notice shall state whether said network continues to be reasonably available to the cable television company. For purposes of this paragraph the term *continues to be reasonably available to the cable television company* shall mean a network, including a broadcast television station, that has been lawfully distributed by the cable television company to its subscribers as part of its basic cable service and without a substantial alteration of the character of the network remains available to the cable television company on the same terms and conditions as before or remains available to the cable television company pursuant to terms and conditions as previously agreed. A network shall also be considered to continue to be reasonably available to a cable television company when, notwithstanding a modification of the terms and conditions under which it may be distributed or a change in the character of the network, the commission so determines in writing based upon consideration of:

(i) whether the cable television company is required to offer commercial leased access and the terms and conditions of such leased access, if any;

(ii) the character of the network relative to the character of other networks distributed on the system and the manner of distribution of such other network;

(iii) the terms and conditions pursuant to which the network is available to the cable television company relative to the terms and conditions applicable to the distribution by the cable television company of other networks as part of basic cable television service;

(iv) the extent to which the network is currently being distributed by other cable television companies in the State as part of basic cable television service on terms and conditions similar to the terms and conditions at issue; and

(v) the extent to which the cable television company may have an ownership interest in any network distributed on the system which is similar in character to the terminated network.

(4) Notice to subscribers. Every cable television company shall provide notice of a network change to each subscriber affected thereby. Such notice shall be provided to subscribers who are receiving services affected by any such change in writing no later than the later occurring of 30 days prior to the effective date of any change or within 30 days of the date upon which the cable television company first knows of such change and by written on-screen visual message prominently displayed on the affected television programming channel or channels, and on the program listing channel of the cable television system, if one is provided, at least once each hour for no less than a 30-day period.

(5) Form and content of notice to subscribers. Notice shall be directed to each affected subscriber as follows:

(i) by the mailing of a separate written notice to the subscriber's billing address of record; or

(ii) by a written notation printed on the subscriber's regular billing statement; or

(iii) by a written notice accompanying the subscriber's regular billing statement. Such notice shall specify the network affected by the change and the effective date of the change and shall inform subscribers of the opportunity to downgrade or terminate service within 45 days of the receipt of the notice without any charge for such termination or downgrade.

(6) Additional provisions for network change affecting a premium service tier. If the notice describes a network change that affects a network that was being distributed as part of a premium service tier immediately prior to the change such notice shall also inform subscribers who have incurred installation, upgrade or other one-time charges relating to such premium service tier within six months prior to the effective date of the change, or who have prepaid any monthly service charges for said premium service tier, that they may elect to downgrade or terminate service within 30 days of the receipt of such notice and obtain a rebate of any such charges.

(7) Additional provisions for network change affecting basic cable service. If the notice describes a network change which affects a network that was being distributed as part of basic cable service immediately prior to the change, and the network was repeatedly promoted by the cable television company and in a significant manner as available as part of basic cable service at any time during the six months immediately preceding the date of the change, such notice, or a second notice given in the same manner as the first notice within 30 days of the first notice, shall contain additional information as follows:

(i) Removal of network to premium tier. If a network is moved from basic cable service to a more expensive tier, such notice shall inform subscribers who commenced their subscriptions to basic cable service during the 90-day period immediately before or after the last day of the promotion, of the opportunity, within 30 days of receipt of the notice either:

(a) to upgrade to the more expensive service tier which includes the network at no charge and to receive said service tier for up to six months also at no charge; or

(b) to terminate service and receive a refund of all installation, upgrade or other one-time charges paid during the six months prior to the change.

(ii) Removal of network from system. If a network:

(a) is deleted from basic cable service;

(b) was a substantial inducement to a significant number of subscribers; and

(c) continues to be reasonably available to the cable television company, such notice shall inform subscribers who commenced their subscriptions to basic cable service during the 90-day period immediately before or after the last day of the promotion, of the opportunity, within 30 days of receipt of the notice, either:

(1) to terminate service and receive a refund of all installation, upgrade or other one-time charges paid during the six months prior to the change; or

(2) to continue service and receive a credit in the amount specified in the notice which credit shall be for a portion of the monthly rate for basic cable service for each month or portion thereof the network is not available on the system during the six-month period commencing with the last day of the promotion; or

(3) to continue service and petition the commission for determination of the amount of an appropriate credit for a portion of the monthly rate for basic cable service for each month or portion thereof the network is not available on the system during the six-month period commencing with the last day of the promotion.

(d) *Pay-per-view programming.* Subdivisions (a) - (c) of this section shall not apply to pay-per-view programming.

(e) *Other subscriber rights.* (1) Notice required. Every cable television company shall provide notice concerning the programming and other services offered on the cable television system and the rates and charges therefor.

(2) Form and content of notice. (i) Notice shall be provided:

(a) to new subscribers at the time of installation;

(b) to any subscriber who requests a change in service;

(c) to all subscribers at least semi-annually; provided, however, that any cable television company that bills subscribers only by coupon book and does not provide regular mailings to subscribers at least quarterly may provide such notice to subscribers on an annual basis; and

(d) to any person who requests such information.

(ii) Notice shall be in writing and:

(a) shall be provided immediately where a request is made in person; or

(b) shall be provided by first class mail sent within 10 business days of the date of any request made by telephone or in writing.

(iii) The notice shall contain a description, materially accurate as of the first day of the previous month, of all service tiers and the networks provided thereon and the rates and charges therefor and any other services offered to subscribers and the rates and charges for such other services. The notice shall also include a statement of significant rights accorded to subscribers pursuant to section 824-a of

the Executive Law and the regulations promulgated by the commission. Such statement shall be in a form as approved by the commission. In addition, notice to new subscribers shall include a copy of any notice which has been sent to current subscribers pursuant to subdivisions (a)-(c) of this section within the previous 60 days.

Historical Note

Sec. filed: April 4, 1990 as emergency measure eff. April 4, 1990; June 19, 1990 as emergency measure, expired 60 days after filing; Aug. 31, 1990 eff. Sept. 19, 1990.

PART 595

FRANCHISE STANDARDS

(Statutory authority: Executive Law, art. 28, §§ 811, 815, 816, 821, 824, 828)

Sec.		Sec.	
595.1	Required contents of franchises	595.4	Minimum standards for public, educational and governmental (PEG) access
595.2	Additional terms and conditions permitted		
595.3	"Negative option" promotional practices	595.5	Requirements for construction of cable television plant and provision of cable television services

595.5 Requirements for construction of cable television plant and provision of cable television services. (a) Definitions.

(1) *Primary service area* shall include each of the following within the franchised area:

(i) those areas where cable television plant has been built without a contribution-in-aid-of-construction by subscribers;

(ii) those areas where the cable television company is obligated by the terms of its franchise to provide cable television service without a contribution-in-aid-of-construction by subscribers;

(iii) any area adjoining an area described in subparagraph (i) or (ii) of this paragraph and which contains dwelling units at a minimum rate of 35 dwelling units per linear mile of aerial cable;

(iv) any area adjoining an area described in subparagraphs (i) and (ii) of this paragraph and which contains at least the same number of dwelling units per linear mile of aerial cable as is the average number of dwelling units per linear mile of cable in areas described in subparagraphs (i) and (ii) of this paragraph. The average is to be determined by dividing the sum of the dwelling units in areas described in subparagraphs (i) and (ii) of this paragraph by the number of linear miles of cable in the same areas.

(2) *Line extension area* shall be any area within the franchised area which is not the primary service area.

(b) Where a cable television franchise is awarded, renewed or amended after October 1, 1982, the franchise will be confirmed or the amendment will be approved by the commission only if the franchise contains the following additional minimum franchise standards:

(1) That, within five years after receipt of all necessary operating authorizations, cable television service will be offered throughout the authorized area to all subscribers requesting service in any primary service area.

(2) That cable television service will not be denied to potential subscribers located in line extension areas who are willing to contribute to the cost of construction in accordance with the following formula:

$$\frac{C}{LE} - \frac{CA}{P} = SC$$

C equals the cost of construction of new plant; CA equals the average cost of construction per mile in the primary service area; P equals the lower of 35 or the average number of dwelling units per linear mile of cable in areas described in subparagraphs

(a)(1)(i) and (ii) of this section; LE equals the number of dwelling units requesting service in the line extension area; and SC equals subscriber contribution-in-aid-of-construction in the line extension area.

(i) Whenever a potential subscriber located in a line extension area requests service, the cable television company shall, within 30 days of the request, conduct a survey to determine the number of potential subscribers located in the line extension area, and shall inform each of the potential subscribers of the contribution-in-aid-of-construction that may be charged. The cable television company may require prepayment of the contribution-in-aid-of-construction. The cable television company shall apply for pole attachment agreements within 30 days of its receipt of the contribution-in-aid-of-construction. Cable television services must be made available to those who made a contribution-in-aid-of-construction within 90 days from the receipt of pole attachment agreements by the cable television company.

(ii) The contribution-in-aid-of-construction shall be in addition to the installation rate set forth in the franchise.

(iii) During a five-year period commencing at the completion of a particular line extension, pro rata refund shall be paid to previous subscribers as new subscribers are added to the particular line extension; the amount of the refund, if any, shall be determined by application of the formula annually. The refunds shall be paid annually to subscribers, or former subscribers, entitled to receive them. The company shall not be required to provide refunds to any previous subscriber otherwise entitled to a refund, who is no longer at the same address and who has not informed the company of the subscriber's address.

(3) That cable television service will be provided to any subscriber who demands service and who is located within 150 feet of aerial feeder cable, and that the charge for the installation for any subscriber so situated will not be in excess of the installation charge specified in the franchise.

(4) Nothing in paragraph (1) of this subdivision shall be construed to preclude:

(i) the provision of cable television services by the franchisee in a line extension area without assessing a contribution-in-aid-of-construction; or

(ii) the inclusion in a cable television franchise of a provision establishing a primary service area which includes at least all of those areas which are in the primary service area as defined in subdivision (a) of this section.

(5) Nothing in paragraph (2) of this subdivision shall be construed to preclude:

(i) the discounting or the waiver of the maximum contribution-in-aid-of-construction charge a cable television company can charge a subscriber pursuant to paragraph (2) of this subdivision; or

(ii) the inclusion of a provision in a cable television franchise establishing a formula to be used to determine the contribution-in-aid-of-construction charge, which formula is different than the formula set forth in paragraph (2) of this subdivision, provided that the formula included in the franchise does not require payment by the subscriber in a line extension area of a higher contribution-in-aid-of-construction charge than would result from the use of the formula set forth in paragraph (2) of this subdivision.

(c) All cable television companies operating in the State of New York shall make cable television service available to all potential subscribers requesting service who are located in a primary service area as defined in paragraph (a)(1) of this section, and shall make services available in line extension areas as defined in paragraph (a)(2) of this section at charges which may not exceed those provided for in paragraph (b)(2) of this section within the following schedule of compliance:

(1) prior to January 1, 1984 in any franchise area for which the original certificate of confirmation of the franchise was granted by this commission prior to January 1, 1979;

(2) within five years from the date the certificate of confirmation was granted by this commission, in any franchise area for which the original certificate of confirmation of the franchise was granted by this commission after January 1, 1979.

(d) The provisions of this section may be waived by the commission if the commission determines that compliance with the section would not be possible within the limitations of economic feasibility.

Historical Note

Sec. filed Aug. 3, 1982; amd. filed Aug. 22, 1983
eff. Aug. 22, 1983.

PART 596

TECHNICAL STANDARDS

(Statutory authority: Executive Law, art. 28, §§ 815, 816, 821)

Sec.		Sec.	
596.1	Definitions	596.6	Monitor point tests
596.2	Applicability	596.7	Testing by special request
596.3	Performance standards	596.8	Trouble call processing
596.4	Initial performance tests	596.9	General
596.5	Annual tests to determine the extent of compliance	596.10	Local programming capability

596.8 Trouble call processing. (a) A telephone number shall be made available to which subscribers may direct trouble calls. In the event that trouble calls must be made outside the subscriber's local dialing area, the calls must be toll free.

(b) Investigative action shall be initiated on the same day a trouble call is received at the local office, if possible, but in no case later than the following business day.

(c) Whenever a service call to the subscriber's premises is required, the company shall advise such subscriber of the opportunity to schedule the service call for the morning or afternoon hours (or evenings or Saturdays, if available) and shall schedule such service call in accordance with the subscriber's request. If, for any reason, the service call is not made within the scheduled time frame, the subscriber shall not be charged for such service call including any installation or reconnection made as a result thereof.

(d) A report on each trouble call in which a cable system fault reported by a single subscriber was identified shall be filed at the local office, and shall include the following data:

- (1) subscriber identification;
- (2) date and approximate time complaint was received;
- (3) date and approximate time of response;
- (4) nature of complaint;
- (5) brief description of the fault;
- (6) signal level measured on each active class I channel after corrective action, where appropriate;
- (7) corrective steps taken (if any required);
- (8) date case is closed; and
- (9) identification of technician or repairperson.

(e) A report on each system fault, or on any failure reported by more than one subscriber and affecting an area, shall be filed at the local office and shall include the following data:

- (1) brief description of the area affected sufficient to allow the later determination of the number of subscribers affected;

(f) The commission intends affirmatively to encourage the application of new and improved technology in cable television. Accordingly, special technical requirements may be prescribed when it has been shown that, because of basic design, or configuration, systems utilizing new concepts cannot comply with the requirements set forth herein.

Historical Note

Sec. filed April 17, 1973; amds. filed: May 3, 1974; Dec. 31, 1974; Oct. 31, 1979 eff. Nov. 1, 1979.